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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MARK THOMAS,

11 Petitioner,

12 v.

13 ELDON VAIL, et al.,

14 Respondents.

CASE NO. C09-1182JLR

ORDER DENYING MOTION  
FOR RELIEF FROM JUDGMENT

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16 This matter comes before the court on Petitioner Mark Thomas's "Motion for  
17 Relief from Judgment or Order Rule 60(b)" (Dkt. # 18). In his motion, Mr. Thomas  
18 requests that the court grant relief from the order of dismissal and judgment pursuant to  
19 Rule 60(b) of the Federal Rules of Civil Procedure. He argues that relief is warranted so  
20 as to prevent the unconstitutional suspension of the writ of habeas corpus. Having  
21 reviewed the motion and for the following reasons, the court DENIES the motion (Dkt. #  
22 18).

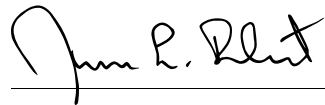
1 First, the court DENIES Mr. Thomas's motion to the extent it is made pursuant to  
2 Rule 60(b). The filing of a notice of appeal divests the district court of jurisdiction to  
3 consider a Rule 60(b) motion to vacate. *See Williams v. Woodford*, 384 F.3d 567, 586  
4 (9th Cir. 2004); *Gould v. Mutual Life Ins. Co. of New York*, 790 F.2d 769, 772 (9th Cir.  
5 1986); *Scott v. Younger*, 739 F.2d 1464, 1466 (9th Cir. 1984). This court lost jurisdiction  
6 over Mr. Thomas's petition when he filed his notice of appeal and therefore cannot  
7 consider Mr. Thomas's motion for relief under Rule 60(b).<sup>1</sup> (*See* Dkt. # 18.)

8 Second, the court DENIES Mr. Thomas's motion to the extent it is construed as a  
9 motion for reconsideration under Local Rules W.D. Wash. CR 7(h). A motion for  
10 reconsideration must be filed within 14 days after the order to which it relates is filed.  
11 Local Rules W.D. Wash. CR 7(h)(2). Mr. Thomas's motion is untimely and thus must be  
12 denied. Additionally, pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for  
13 reconsideration are disfavored, and will ordinarily be denied unless there is a showing of  
14 (a) manifest error in the prior ruling, or (b) facts or legal authority which could not have  
15 been brought to the attention of the court earlier, through reasonable diligence. Because  
16 Mr. Thomas has not made either showing with regard to the court's prior order, the court  
17 denies his motion for reconsideration.

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20 <sup>1</sup> To the extent the court retains jurisdiction to consider the motion, which was filed  
21 contemporaneously with the notice of appeal, the court denies the motion on its merits. Mr.  
22 Thomas has not shown that he is entitled to relief under any of the grounds enumerated in Rule  
60(b). Likewise, the court expresses its unwillingness to entertain the present motion on limited  
remand if offered the opportunity to do so by the United States Court of Appeals for the Ninth  
Circuit. *See Williams*, 384 F.3d at 586.

1 Dated this 12th day of May, 2010.

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4 JAMES L. ROBART  
5 United States District Judge  
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